@))

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.2734 OF 2005

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SURAT MUNICIPAL CORPORATION

Versus

GOVINDBHAI RANCHHODBHAI PAREKH & ORS.

Appearance:

1. Special Civil Application No. 2734 of 2005

MR. PRASHANT G. DESAI for Petitioner

RULE SERVED BY DS for Respondent No. 1

MR. AMIT V. THAKKAR for Respondent Nos. 2-3

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 05/05/2005

ORAL JUDGEMENT

1. Since respondent no.1-Trustee, Govindbhai Ranchhodbhai Parekh, has expired, Mr.Prashant G.Desai, learned Advocate for the petitioner, seeks permission to delete respondent no.1.

Permission is granted.

2. By way of this petition, the petitioner has challenged the order dated 15th September, 2004 passed by the learned Joint District Judge, 8th Fast Track Court, Surat, in Civil Miscellaneous (Delay) Application No.72 of 2000 whereby the trial Court has rejected the application on the ground that the Limitation Act is not applicable to the appeal preferred under Section-416 of the Bombay Provincial Municipal Corporations Act, 1949 (`the Act' for short).

3. Mr.Prashant G.Desai, learned Advocate for the petitioner-Municipal Corporation, vehemently submitted that the Appellate Court has committed an error in not allowing the application in view of the provisions of Section-435 of the Act.

4. Opposing the contention of Mr.Prashant G.Desai, Mr.Amit Thakkar, learned Advocate for the respondents, contended that the view taken by the Appellate Court is just and proper in view of the fact that it is a special statute and the Limitation Act will not apply.

5. The provisions of Section-435 of the Act are relevant for the purpose of deciding the dispute in the matter. The same are reproduced hereunder for ready perusal:

"435. Limitation.

(1) In computing the period of limitation prescribed for an appeal or application referred to in this Chapter, the provisions of sections 5, 12 and 14 of the Indian Limitation Act, 1908, shall, so far as may be apply.

(2) When no time is prescribed by this Act for the presentation of an appeal, application or reference, such appeal or application shall be presented or reference shall be made within thirty days from the date of the order in respect of or against which the appeal, application or reference is presented or made."

A bare perusal of the statutory provisions of Section-435 makes it abundantly clear that the view taken by the Appellate Court is erroneous and is required to be

interfered with.

Even, Mr.Thakkar, the learned Advocate, is not able to come out of the statutory provisions of Sub.section-(1) of Section-435 of the Act. In that view of the matter, the impugned order passed by the Appellate Court is required to be quashed and set aside.

6. In the result, the present petition is allowed. The impugned order passed by the Appellate Court is quashed and set aside. The Appellate Court will hear the delay condonation application, Exh.12, preferred in Civil Miscellaneous Appeal No.72 of 2000 on merits and will decide the same in view of the provisions of Section-435 of the Act. Rule is made absolute to the aforesaid extent only. No order as to costs.

7. Mr.Thakkar, the learned Advocate, stated that the amount is already withdrawn by furnishing the Bank Guarantee.

It is clarified that withdrawal of the amount shall be subject to the result of the appeal.

[K.S.Jhaveri, J.]

kamlesh*